

*Ginger*  
Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert R. Corbin

February 23, 1972

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ARIZONA ATTORNEY GENERAL

INTERAGENCY

Mr. Duane F. Wolfe  
Director of Accounting  
Division of Finance  
Department of Administration  
1510 West Adams Street  
Phoenix, Arizona 85007

Re: I82-022 (R82-015)

Dear Mr. Wolfe:

You have asked us whether the Assistant Director for Finance, in connection with the Department of Economic Security's assistance programs, may approve the use of a replacement warrant bond which bears the signature of only one surety who is not a real property owner.<sup>1/</sup>

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1. You have informed us that the Assistant Director for the Division of Finance presently requires the signatures of two sureties who are real property owners before granting a request for the issuance of a replacement warrant, unless the warrant is an AFDC warrant, in which case, as a result of a federal district court preliminary injunction, the sureties need not be real property owners. You have also advised us that your agency is not staffed at a level sufficient to permit it to verify whether the persons signing as sureties are in fact real property owners. Moreover, you have advised us that there have been very few, if any, instances in which the State has ever had to pay more than once on any claim arising under the State's welfare or general assistance programs.

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A.R.S. § 35-186 permits the Assistant Director for Finance to issue a replacement warrant for an allegedly lost warrant. If the allegedly lost warrant is not yet out of date, the statute requires the person who allegedly lost it to provide the State with a bond signed by a "surety to be approved by the assistant director." As you are aware; A.R.S. § 7-101 states that, where a bond is required by law, it shall, "unless other-wise specified by the law requiring it," be executed by the principal and at least two real property owning sureties. You question whether the Assistant Director has the discretion under A.R.S. § 35-186 to approve a bond not meeting the specifications of A.R.S. § 7-101.

We think the Assistant Director has this discretion. A.R.S. § 35-186 explicitly gives the Assistant Director the authority to approve the surety. If the Legislature had desired to limit the Assistant Director's choice of surety to that specified by A.R.S. § 7-101, we think it would have so indicated in A.R.S. § 35-186. But the Legislature did not do this. Moreover, A.R.S. § 7-101, by its own terms, does not apply where the law requiring the bond specifies something other than the A.R.S. § 7-101 qualifications. We think A.R.S. § 35-186 is such a law, as the choice of the qualifications for the surety is left to the Assistant Director.

We therefore conclude that the Assistant Director's discretion under A.R.S. § 35-186 is not limited by A.R.S. § 7-101. That discretion should, however, be exercised in a manner that protects the State's interests and yet honors the interests of the beneficiaries of the State's grant programs.

Sincerely,

*Bob Corbin*

BOB CORBIN  
Attorney General

BC:ASK:lfc